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Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-first session, (17 to 26 April 2018)

Opinion No. 31/2018 concerning Mohamed Al-Bambary (Morocco)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 33/30.

2. On 5 September 2017, in accordance with its methods of work (A/HRC/36/38), the Working Group transmitted to the Government of Morocco a communication concerning Mohamed Al-Bambary. The Government replied to the communication on 13 November 2017. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Mr. Al-Bambary is a Saharawi media activist and human rights defender.

5. According to the source, in 2011, Mr. Al-Bambary began working as a correspondent for Équipe Média, a group of media activists who document and disseminate information on abuses occurring in Western Sahara. The source maintains that Équipe Média is the principal independent press organization in Western Sahara and has been subjected to serious harassment by the Moroccan authorities. As part of his work for Équipe Média, Mr. Al-Bambary documented violence used by the Moroccan security forces and by Moroccan settlers against the indigenous population of Western Sahara. As a result of his work, Mr. Al-Bambary was first subjected to harassment by the Moroccan authorities, including through attempted police arrest, in August 2011.

6. The source reports that between 25 and 27 September 2011, seven persons were killed in a riot following a football match at Dakhla. Mr. Al-Bambary covered those events and succeeded in documenting a number of acts of violence committed during the riot. The source states the Mr. Al-Bambary in no way participated in the violence himself. Eventually, five men were declared guilty and sentenced to three years in prison for their part in the riots.

Background

7. The source explains that the United Nations Organization considers Western Sahara to be a "Non-Self-Governing Territory". It points out that Morocco continues to administer Moroccan law throughout the province and to suppress the independence movement. The Saharawi, especially those who support independence, face serious discrimination in respect of education, employment, access to social services and treatment by the justice system. Morocco places considerable restrictions on freedom of expression and of association in Western Sahara, particularly in matters relating to its independence. Numerous journalists have been prosecuted under laws criminalizing criticism of Moroccan claims on Western Sahara, resulting in self-censorship by the Saharawi media. Morocco also restricts independence organizations' freedom of association.

8. The source stresses that in this repressive climate the arbitrary detention of journalists and militants has become generalized. Problems common to arbitrary detention include arrest without warrant, detention beyond the legal limit for filing charges and prolongation of pretrial detention. Those who are imprisoned for their political activities are in general held under fabricated charges. Although the Constitution of Morocco guarantees the independence of the judiciary, outside influences considerably weaken the independence of judges. Indeed, the political situation has eroded respect for safeguards guaranteed by Moroccan law, such as access to a lawyer or the presumption of innocence. According to the source, recourse to the use of torture to extract confessions is frequent in cases against the Saharawi or against persons accused of terrorism. Finally, conditions of detention in Western Sahara are particularly poor due to prison overcrowding, insalubrious and poorly ventilated cells, physical violence, insufficient food and lack of health care.

Arrest and detention

9 The source states that Mr. Al-Bambary was arrested on 26 August 2015 at the Dakhla police station, where he had gone to have his identity papers renewed. At the time of his arrest, the police accused Mr. Al-Bambary of having taken part in pro-independence demonstrations that had occurred in 2015. No arrest warrant was issued, however, and Mr. Al-Bambary was not informed of the precise charges levelled against him. The source notes that Mr. Al-Bambary was detained incommunicado and was not allowed to speak to a lawyer before his appeal hearing in January 2016. During his detention, he was beaten to obtain a confession. His interrogators demanded information on the Dakhla demonstrations in 2011 and 2015, on who financed his work, as well as on the "foreign entities" that published his work. He was not permitted to read or examine the documents he was forced to sign.

10. On 31 August 2015, Mr. Al-Bambary was summoned before a judge to be charged. The judge refused to grant him bail, without justifying the reason. Towards 20 October 2015, the El-Aaiun appeal court, acting as the court of first instance, examined Mr. Al-Bambary's case. While he had previously understood his arrest to be connected to his alleged participation in the 2015 demonstrations, during the trial he found out that the charges were in fact related to the 2011 riots. More precisely, he was accused of having assembled a criminal gang, participated in a murder, obstructed the public way, taken part in a deadly fight, committed violent acts against public servants, and of having sabotaged public property, in contravention of articles 293, 294, 392, 267, 129, 591, 271 and 595 of the Penal Code of Morocco.

11. According to the source, those hearings were held in closed session. Mr. Al-Bambary was not assisted by a defence counsel. Moreover, he was not allowed to present his case and the court based its conviction entirely on a police report. According to the source, the judge treated Mr. Al-Bambary with open contempt. He refused to allow him to speak and when he did try, ordered the police to remove him from the court. On 4 November 2015 the court of first instance convicted Mr. Al-Bambary on all charges and sentenced him to 12 years' imprisonment.

12. According to the source, Mr. Al-Bambary began a hunger strike on 5 November 2015. He called it off on 13 January 2016, immediately following his conviction on appeal.

13. On 12 January 2016, Mr. Al-Bambary appeared before the El-Aaiun appeal court of second instance. That time the trial was public and many people who sympathized with Mr. Al-Bambary attended the hearing. He was not permitted to meet with his lawyer before the hearing to prepare his defence.

14. The prosecutor accused Mr. Al-Bambary of having taken part in the 2011 riots, asserting that the men convicted in the previous case had confessed that he was implicated in a homicide. Mr. Al-Bambary categorically denied any participation whatever in violent acts. The source states that Mr. Al-Bambary's lawyers, suspecting that the so-called confessions of the prisoners in the previous case had been extracted under torture, recalled the political motives behind the case. The judge rejected two defence motions: firstly, for an adjournment, to allow the lawyers to prepare a proper defence and, secondly, a request to hear the testimony of the individuals whose incriminatory statements were being put forward by the prosecutor as evidence against Mr. Al-Bambary.

15. According to the source, defence counsel had presented evidence showing that Mr. Al-Bambary was a human rights militant and a journalist for Équipe Média. The only witness who testified during the trial was an eminent human rights defender, who rejected any sort of involvement by Mr. Al-Bambary in the crimes of which he was accused. His legal counsel's defence included the argument that the Government had violated article 22 of the Moroccan Constitution on the prohibition of torture.

16. According to the source, the prosecution's sole item of evidence was the supposed confessions of the previously convicted men that Mr. Al-Bambary had been involved; those persons were not called to testify before the court. The court of second instance upheld Mr. Al-Bambary's conviction, but reduced his sentence to six years' imprisonment, a sentence three years longer than all other convictions for participation in the riots. In December 2016, the court of cassation rejected Mr. Al-Bambary's final appeal.

17. Mr. Al-Bambary is currently being held in the Ait Melloul prison. His health has deteriorated in jail and on 28 December 2015 he was hospitalized for complications related to his hunger strike. He continues to suffer from asthma and a stomach ulcer.

18. The source considers that Mr. Al-Bambary's detention constitutes arbitrary deprivation of liberty falling within category II, category III and category V as defined by the methods of work applicable to the examination of cases submitted to the Working Group on Arbitrary Detention.

Category II

19. The source argues that Mr. Al-Bambary's detention is arbitrary under category II, because he was arrested, detained and convicted for having exercised his freedom of

expression and freedom of association. These freedoms are protected under article 19 (2) and 22 (1) of the International Covenant on Civil and Political Rights and by articles 19 and 20 (1) of the Universal Declaration of Human Rights.

20. According to the source, given the history of the Government's attempts to intimidate the Équipe Média journalists into silence by harassment and arbitrary arrest, it is clear that the Government of Morocco targeted Mr. Al-Bambary and imprisoned him to prevent him from continuing his work as a journalist documenting Moroccan abuse against Western Saharan citizens. The fact that Mr. Al-Bambary was arrested close to four years after his alleged crime (while no effort had been made to apprehend him when the riots had occurred following a football match in 2011), that no warrant was served and that Mr. Al-Bambary was not informed of the charges against him at the time of his arrest, reveal the tenuous link between his arrest and his alleged offence. Moreover, during his interrogation, when torture was employed, the nature of the questions put to Mr. Al-Bambary regarding the identity of the persons who financed and published his work show that the Moroccan Government's interest in Mr. Al-Bambary was in reality connected to his freedom of expression and of association as an Équipe Média journalist.

Category III

21. The source maintains that Mr. Al-Bambary's detention is arbitrary under category III, on the grounds that the Government denied him the right to a fair trial as required by international standards.

22. The source notes that, in accordance with article 9 (1) of the Covenant, with article 9 of the Universal Declaration of Human Rights and with principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, an individual has the right not to be subject to arbitrary arrest. This right requires that the arrest must be carried out in accordance with the provisions of the national law relating to deprivation of liberty. In Mr. Al-Bambary's case, this right was violated, because the police breached Moroccan law by failing, when arresting him, to serve him with a warrant allowing him to contest his detention before a judge within 24 hours and to gain prompt access to a defence counsel.

23. The source also observes that, in accordance with article 9 (2) of the Covenant and principle 10 of the Body of Principles, a detainee has the right to be informed, at the time of arrest, of the reasons for his arrest and to be promptly informed of the charges held against him. The source notes that the authorities did not present Mr. Al-Bambary with a warrant for his arrest; nor did they explain precisely why he had been arrested. Instead of these formal safeguards, Mr. Al-Bambary was led to believe that he had been arrested in connection with the 2015 pro-independence demonstrations. He was in fact informed of all the charges against him only at the start of his trial, nearly two months later.

24. The source also states that, in accordance with articles 9 (3) and (4) of the Covenant and with principles 4, 11 (1), 32 and 37 of the Body of Principles, any person has the right to contest the lawfulness of his detention by being brought promptly before a judicial authority. Furthermore, incommunicado detention fundamentally violates article 9 (3) of the Covenant. Article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles guarantee that in the absence of a specific decision to the contrary, any person detained is entitled to be released pending trial. The source argues that Morocco violated Mr. Al-Bambary's rights by refusing to allow him to contest his detention until 31 August 2015, a delay that exceeds the requirement by which a detainee must be brought "promptly" (within 48 hours) before a judge. Moreover, at his arraignment on 31 August 2015, the judge refused Mr. Al-Bambary bail pending the trial, without giving any reason.

25. The source notes that articles 7 and 10 (1) of the Covenant, articles 1 and 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 5 of the Universal Declaration of Human Rights and principle 6 of the Body of Principles ensure that persons under detention are protected against torture and cruel, inhuman or degrading treatment or punishment. Article 14 (3) of the Covenant and principle 21 (2) of the Body of Principles expressly prohibit the use of torture to obtain a forced confession. The source maintains that Morocco violated this prohibition when Mr.

Al-Bambary was beaten under interrogation to make him confess and give information on the identity of the persons who financed and published his work.

26. The source holds that, by virtue of article 14 (1) of the Covenant and articles 7 and 10 of the Universal Declaration of Human Rights, all persons have equal rights before the courts and are entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. This safeguard requires that access to the hearing should not be limited to a restricted group of persons; that the judiciary should be free from influence by the executive; that the tribunal should appear impartial to an objective observer; and that both parties should enjoy the same procedural rights. The source notes that in the case of Mr. Al-Bambary, those rights were violated, as the trial in the court of first instance was held in closed session, while the appeal proceedings of 12 January 2016 were markedly partial towards the prosecution. During the first instance proceedings, Mr. Al-Bambary was never given a real opportunity to defend himself; he was denied access to a lawyer and convicted on the basis of a police report and a confession obtained under torture. At the appeal, the court of second instance refused two defence motions which would have allowed him to argue his case on an equal footing with the prosecution, as explained above.

27. The source observes that, contrary to article 14 (2) of the Covenant, article 11 (1) of the Universal Declaration of Human Rights and of principle 36 (1) of the Body of Principles, the court of first instance violated Mr. Al-Bambary's right to presumption of innocence by treating him as if his guilt was already established. Besides depriving Mr. Al-Bambary of a lawyer and the opportunity to present his case, the court of first instance did not base its conviction on evidence presented by the Office of the Public Prosecutor, but solely on a police report, which most probably contained a confession obtained through torture. Furthermore, the court of first instance did not take the time to deliberate, but convicted Mr. Al-Bambary immediately after reading out the list of charges against him.

28. The source also notes that, contrary to articles 14 (3) (b) and (d) of the Covenant and to principles 11 (1), 15, 17 (1) and 18 of the Body of Principles, the police held Mr. Al-Bambary incommunicado, without access to his lawyer until his appeal hearing, which meant that he was not represented during his interrogation, his arraignment or his trial before the court of first instance. He was also not permitted to meet with his lawyer in order to prepare his defence before his appeal. Nor was he able to prepare his defence himself prior to his initial trial, because he had not been informed of the charges against him and because the judge did not let him speak during the hearing.

29. The source maintains that, under article 14 (3) (e) of the Covenant, the accused has the right to examine all the prosecution witnesses. In this case however, Mr. Al-Bambary was not permitted to examine them during the trial of first instance, where the judge did not let him speak, nor during his appeal, where the judge expressly denied defence counsel's request to call the prosecution witnesses who had testified against Mr. Al-Bambary.

Category V

30. The source maintains that Mr. Al-Bambary's detention is arbitrary under category V, as the Government detained Mr. Al-Bambary partly as a result of its discriminatory attitude towards him as a Saharawi and a defender of Saharawi rights.

31. The source observes that, contrary to articles 2 (1) and 26 of the Covenant, articles 2 and 7 of the Universal Declaration of Human Rights, article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, and principle 5 (1) of the Body of Principles, the arrest, detention and treatment of Mr. Al-Bambary took place in a climate of generalized discrimination against the Saharawi people and against those who defend their rights. The fact that the interrogation concentrated on Saharawi demonstrations and on the identity of the persons financing Mr. Al-Bambary's pro-Saharawi statements proves that the authorities were focusing on his role as a defender of Saharawi rights. The general picture of the Government's harassment of the Saharawi and of the defenders of their rights, including previous acts of harassment against Mr. Al-Bambary, the illogical timing of his arrest, which occurred four years after his alleged crime, as well as the consequences of his conviction — namely that he was left unable to

continue his work documenting abuse of the Saharawi — clearly show that Mr. Al-Bambary's identity as a Saharawi and a defender of Saharawi rights was the real reason for his arrest, trial and conviction, in violation of his right to non-discrimination before the law.

Reply of the Government

32. The Government replied to the communication on 13 November 2017.

33. In its reply, the Government first contests the general affirmations of a political nature regarding Western Sahara, recalling that the region is a Moroccan province and that the political dispute falls exclusively under the responsibility of the Security Council, within a settlement framework in place since 2007.

34. The Government also recalls that freedom of association, freedom of opinion and freedom of expression in the western provinces of Morocco were clearly established in the 2011 Constitution and are respected. It points out that the local authorities in the town of Laayoune had registered 2,984 associations. In the town of Dakhla, 937 associations had been registered. Finally, it adds that many bodies, including foreign delegations, political party leaders, academics and the diplomatic missions of States and international organizations all enjoyed uninterrupted access to these provinces and could thus appreciate the reality of these freedoms.

35. The Government identifies the victim as being Mr. Mohamed Benbari bin Abdullah bin Khalil, a Moroccan citizen born in 1969 and residing at Dakhla. His schooling did not go beyond the fifth year of primary school and he is said to be not a journalist but a sea fisherman. The Government affirms that he never presented a press accreditation card and had never applied to be a member of the Moroccan National Press Union, besides the fact that there was not a single publication bearing his name. However, according to the Government, an arrest warrant had indeed been issued prior to his arrest on 27 August 2015. He was brought before the judge on 29 August 2015, then sentenced by decision of the court of first instance on 31 August 2015 for having assaulted a public officer in the course of his duty and destroyed public property to one month's imprisonment and a fine of 500 dirhams. The Laayoune court of appeal upheld this judgment on 25 August 2016.

36. According to the Government, on 16 November 2011, another arrest warrant had been issued on account of a riot in Dakhla that had resulted in several deaths following a football match. Because of this, on 1 September 2015, the Office of the Public Prosecutor ordered the referral of Mr. Benbari before the investigating judge and a ruling was handed down on 4 November 2015 by which Mr. Benbari was sentenced to 12 years' imprisonment for assault resulting in death. On 12 January 2016, the Laayoune court of appeal commuted the sentence to six years for affray resulting in death. Mr. Benbari's appeal of 16 November 2016 was dismissed by the court of cassation. The Government maintains that the entire procedure was public, that the accused enjoyed the assistance of several lawyers and that he had never reported any ill-treatment or requested a medical examination.

37. Lastly, the Government gave details of Mr. Benbari's detention conditions and management of his health issues, showing them to be optimal.

Reply of the source

38. The Government's reply was brought to the attention of the source on 13 November 2017 for any additional comment. The source replied on 20 November 2017, contesting the Government's reply on three points: the political issues surrounding Western Sahara; factual assertions unsupported by evidence; and the allegations that remained unanswered by Morocco.

Examination

39 The communication addressed to the Government on 5 September 2017 called for a reply by 6 November 2017 at the latest. On 3 November 2017, Morocco requested an extension to that time limit. The Working Group replied immediately, asking the Government to give reasons for the requested extension. However, as no reasons were forthcoming, the Working Group allowed an extension of no more than seven days to

enable the Government to submit its reply. On 13 November 2017, the permanent mission submitted the Government's reply to the Working Group under cover of a note verbale dated 11 November 2017. Since the reply was in Arabic, the Working Group had to delay consideration of the case in order to have the reply translated into one of the Group's working languages. The Working Group thanks the parties for their cooperation.

40. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof rests with the Government should it wish to refute the allegations (see A/HRC/19/57, para. 68).

41. As regards the general situation explained by the source, the Working Group recalls that it had examined the situation of Western Sahara in its mission report,[1] and had "received numerous complaints indicating a pattern of excessive use of force in repressing demonstrations and in arresting protestors or persons suspected of participating in demonstrations calling for self-determination of the Sahrawi population".[2] At the same time it found "that torture and ill-treatment were used to extract confessions and that protestors were subjected to excessive use of force by law enforcement officials".[3]

42. The Working Group recalls in this connection that confessions cannot be taken as evidence in a trial where they have been obtained through torture or ill-treatment. The Working Group further recalls that to consider that the "records established by the judicial police are prima facie evidence [...] is tantamount to reversing the burden of proof by requiring the accused to prove his innocence, which is contrary to the principle of the presumption of innocence, as stated in article 23 of the Constitution. It also creates conditions that encourage the torture and ill-treatment of suspects."[4] Moreover, in its report, the Working Group had been able to observe that "in the majority of cases, lawyers meet their clients only at the first hearing before the judge"[5] and that the police were reluctant to "to inform detainees of their right to have access to a lawyer in criminal cases".[6]

43. The source's allegations partly concur with the observations of the Working Group and highlight the situation of journalists and human rights defenders in Western Sahara. The Working Group also noted similar allegations in previous opinions.[7] The source indicates that this situation particularly affects Équipe Média journalists, several of whom have been subjected to pressure or arrested, among them Mr. Al-Bambary who, according to the source is an Équipe Média correspondent and a human rights defender in Western Sahara. The source states that the complainant had already been subjected to harassment.

44. In the course of his work, Mr. Al-Bambary reported on a pro-independence demonstration in 2015. On 26 August 2015, Mr. Al-Bambary was arrested without being served a warrant. He was clearly being held to account for having taken part in the 2015 demonstration. Five days after his arrest, without his lawyer being present, he was brought before a judge for his arraignment. The judge refused to grant him bail, without giving any reason.

45. Furthermore, according to the source, the nature of the questions asked to Mr. Al-Bambary during his interrogation, which focused primarily on the identity of the persons who financed and published his work, would suggest that what really interested the Moroccan Government was the media coverage of the events as well as Mr. Al-Bambary's work for Équipe Média. In that connection, the Working Group considers that Mr. Al-Bambary' activity had indeed been journalistic and that it is not necessary to possess a press accreditation card or to be a member of a professional association to exercise such an activity, contrary to the Government's arguments.

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[1] See A/HRC/27/48/Add.5, paras 62–71.
[2] Ibid, para. 64.
[3] Ibid, para. 63.
[4] Ibid, para. 33.
[5] Ibid, para. 45.
[6] Ibid.
[7] Opinions Nos. 11/2017 and 54/2013.

46. Being convinced that Mr. Al-Bambary was providing media coverage of the political demonstrations mentioned above, the Working Group considers that his arrest and detention are in violation of the protection afforded him under articles 19, 22 and 26 of the Covenant. It follows that Mr. Al-Bambary is arbitrarily detained under category II.

47. The source also alleges that during his detention Mr. Al-Bambary was subjected to ill-treatment, being forced to sign documents without knowing their content. The Government affirms that Mr. Al-Bambary had limited education, without explaining how he had been able to understand the confessions used for his conviction. There is therefore violation on two counts. Firstly, evidence obtained by imposing restraint on the accused is inadmissible in law. Secondly, it is an essential rule of criminal justice that no one should ever be coerced into testifying against him or herself.

48. Moreover, the source reports that the complainant met with his lawyer only at the time of his first hearing, which prevented him from preparing his defence. The same happened during his second trial. Furthermore, Mr. Al-Bambary was reportedly not given the opportunity to express himself during the first trial, which was held in closed session. The Government maintains that Mr. Al-Bambary definitely had a lawyer, but that he chose not to take up his right to be represented, without providing any proof of this assertion. The Working Group considers that the right to legal assistance and representation is essential, to the extent that should the State maintain that the accused renounced this right without evidence to support that assertion, then it would be detrimental to the rights of the accused to find in favour of the State on this question. The Working Group is therefore of the opinion that the source is correct on this point.

49. These situations constitute particularly serious violations of the right to a fair trial as established under article 14 of the Covenant. The Working Group concludes that, even if a trial should not take place as a result of the positive conclusion under category II, violation of the right to a fair trial makes the detention arbitrary under category III.

50. The allegation of restraint and ill-treatment during detention will be sent to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

51. Lastly, the Working Group notes the unceasing abuse of persons who, like Mr. Al-Bambary, work in the independent media in Western Sahara and who cover events related to Saharawi self-determination and to human rights violations.[8] The Government rejects this allegation without bringing forward any evidence in support of its position. The Working Group, however, is convinced in the light of the circumstances described in the file that Mr. Al-Bambary has been subjected to discrimination, in breach of international law and in particular of article 2 (1) of the Covenant. The Working Group therefore considers that Mr. Al-Bambary's detention is arbitrary under category V as well.

Disposition

52. In light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Mohamed Al-Bambary, being in contravention of articles 2, 5, 7, 9, 10, 11 (1), 19 and 20 (1) of the Universal Declaration of Human Rights and of articles 2 (1), 9, 14, 19, 22 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls under categories II, III and V.

53. The Working Group requests the Government of Morocco to take the necessary steps to remedy the situation of Mr. Al-Bambary without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

54. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Bambary, to accord him an enforceable right to reparation, including compensation and a guarantee of non-recurrence,

[8] Opinion No. 11/2017.

in accordance with international law, and to provide them with the appropriate medical care required by his condition.

55. The Working Group urges the Government to conduct a full and independent investigation into the circumstances surrounding the arbitrary deprivation of liberty of Mr. Al-Bambary and to take appropriate measures against those responsible for the violation of his rights.

Follow-up procedure

56. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on all action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Mr. Al-Bambary has been released and, if so, on what date;

(b) Whether reparations, including compensation, have been made to Mr. Al-Bambary;

(c) Whether an investigation has been conducted into the violation of Mr. Al-Bambary's rights and, if so, the outcome of the investigation;

(d) Whether Morocco has modified its legislation or practice in order to bring them into line with its obligations under international law, as recommended in the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

57. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether any further technical assistance is required, for example on the occasion of a visit by the Working Group.

58. The Working Group requests the source and the Government to provide the requested information within six months of the date of transmission of the present opinion. Nevertheless, the Working Group reserves the right to take its own action in follow-up to the opinion should new concerns in relation to the case be brought to its attention. That would enable it to inform the Human Rights Council as to whether progress has been made in the implementation of its recommendations, or on the contrary whether no action whatsoever has been taken in that respect.

59. The Government should disseminate through all available means the present opinion among all stakeholders.

60. The Working Group recalls that the Human Rights Council has called on all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of all persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[9]

[*Adopted on 25 April 2018*]

[9] See Human Rights Council resolution 33/30, paras. 3 and 7.